

REMARKS

Claims 1-12 are pending in the application. Claims 1-12 stand rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-19 of U.S. Patent No. 6,236,647 to Amalfitano in view of Taipale (U.S. Patent No. 6,310,856). Claims 1-12 also stand rejected under 35 U.S.C. 103(a) as being unpatentable over these same references. No amendments are being made. No new matter is being introduced.

Taipale issued October 30, 2001. No indication on the cover page of the patent shows that it was published prior to this date. Applicants believe that the Taipale reference should not be considered prior art as of the filing date, March 5, 1999, of the application at hand under 35 U.S.C. 103(a) or for purposes of non-statutory obviousness-type double patenting because this reference was not available to the public prior to the date of filing. See MPEP 706.02(a), 2126, and 2128. See also *In re Ekenstam*, 256 F.2d 321, 118 USPQ 349 (CCPA 1958) (The date that the patent is made available to the public is the date it is available as a 35 U.S.C. 102(a) or (b) reference.). Since Taipale is not available as a prior art reference, a rejection combining Taipale with Amalfitano is improper. Accordingly, Applicants respectfully submit the double patenting rejection and the non-obviousness rejection under 35 U.S.C. 103(a) are improper and should be withdrawn.

With regard to rejected claims 2-3, 6-9, and 11-12, Applicants note that Amalfitano does not teach everything as claimed in Claim 1. Specifically, Amalfitano does not disclose forward error correction encoding and decoding, as recited in claim 1 and stated in Parts 2 and 3 of the Office Action at hand.

Information Disclosure Statement

An Information Disclosure Statement (IDS) is being filed concurrently herewith. Entry of the IDS is respectfully requested.

CONCLUSION

In view of the above remarks, it is believed that all pending claims (Claims 1-12) are in condition for allowance, and it is respectfully requested that the application be passed to issue. If the Examiner feels that a telephone conference would expedite prosecution of this case, the Examiner is invited to call the undersigned.

Respectfully submitted,

HAMILTON, BROOK, SMITH & REYNOLDS, P.C.

By Mark B. Solomon
Mark B. Solomon
Registration No. 44,348
Telephone: (978) 341-0036
Facsimile: (978) 341-0136

Concord, MA 01742-9133

Dated: 10/22/03